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This is the peer reviewed version of the following article: **Rosa Freedman, *Failing to Protect: The UN and the Politicisation of Human Rights* London, Hurst, 2014, 224pp., ISBN 9781849044097, £16.99 (paperback)**, which has been published in final form at Leiden Journal of International Law.

Rosa Freedman, *Failing to Protect: The UN and the Politicisation of Human Rights* London, Hurst, 2014, 224pp., ISBN 9781849044097, £16.99 (paperback).

On 5th August 2014, Human Rights Watch reported that an activist in Thailand was secretly detained, beaten and tortured by the Thai junta.¹ In June 2014, independent human rights experts expressed concern about arbitrary detention in Thailand,² and the High Commissioner for Human Rights corresponded with the Thai authorities, emphasising the need to comply with international human rights law. There was no reply and the abuses continued.³ Aside from the statement by the experts and the communication from the High Commissioner, there were no resolutions adopted by the UN Human Rights Council on the human rights violations in Thailand. An observer would be forgiven for thinking that the UN does little to protect human rights.

¹ 'Thailand: Investigate Alleged Torture of Activist' (*Human Rights Watch*, 5 August 2014) <www.hrw.org/news/2014/08/05/thailand-investigate-alleged-torture-activist> accessed 18 August 2014.

² "'Fundamental rights at stake in Thailand' – UN experts concerned about arbitrary detentions and restrictions' (*United Nations Human Rights*, 13 June 2014) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14696&LangID=E> accessed 18 August 2014.

³ 'Press briefing notes on Thailand' (*United Nations Human Rights*, 5 August 2014) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14918&LangID=E> accessed 18 August 2014.

There are a number of institutions, some political and some quasi-judicial that form the 'UN Human Rights Machinery'. The UN Human Rights Council, the specific treaties bodies, Special Procedures and the Office of the High Commissioner for Human Rights, are complementary and 'interconnected bodies' with mandates to protect human rights (p. 139). The UN Charter declares the need to 'reaffirm faith in fundamental human rights', and the protection, promotion and development of human rights makes up one of the three pillars of the UN: maintain peace and security, self-determination and development, protect and promote human rights. Yet, as the example from Thailand highlights, the UN human rights machinery does not always help the victims of human rights abuses. *Failing to Protect: The UN and the Politicisation of Human Rights* asks why an international organisation mandated to protect human rights repeatedly fails to achieve this goal.

The UN Human Rights Council is the principal human rights body, and the principal focus of Freedman's book. Established by General Assembly Resolution 60/251 in March 2006, the Council was created to replace the Commission on Human Rights, which was criticised for being overly politicised.⁴ Composed of 47 Member States, Council membership is based on the principle of 'equitable geographical distribution' and there is one vote per state. There are a number of political blocs at the Council, which include; the Organisation of Islamic Cooperation, the African Group, the Arab Group, the European Union, the Non-aligned Movement and the Group of 77. These blocs are able to shield themselves and allied states from scrutiny through a number of tactics that are outlined in the book. States will over-emphasise small successes or repeatedly criticise one state in order to avoid criticism (p. 57). Politicisation is rife at the Council, and like the Commission, work on protecting human rights is undermined. In addition to state tactics, the Council does not have the sufficient

⁴ Philip Alston, 'Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council' (2006) 7 Melbourne Journal of International Law 185, 187.

powers to carry out fact-finding missions in those states that refuse entry to independent experts (p. 105), or to gather information for Council sessions from those states that refuse to engage (pp. 97-118). Institutional weaknesses combined with state practices explain the failure of the UN Human Rights Council to protect human rights.

Failing to Protect is Freedman's second book on the politicisation of human rights and the UN. In *The United Nations Human Rights Council: An Early Assessment*,⁵ Freedman focused on the formative years of the Council, to demonstrate how political groupings and their tactics had hindered the work of the human rights body. From the descriptions of the delegates who ignore protestors and the comfortable Serpentine Bar where delegates sip lattes (p. xiii), it is clear from the very beginning that *Failing to Protect* is a harsher critique of the UN.

The stories of victims ignored by the Council, which introduce the chapters throughout the book, justify a harsh assessment. Yet, the Council has had periods of relative success and in 2011, the Council responded quickly to human rights crises in Libya, Syria, and Côte d'Ivoire.⁶ However, the book is not unnecessarily critical of the UN, and Freedman gives praise where it is due. The Universal Periodic Review process is heralded as a success for the universality of human rights (pp. 138-139). All Member States of the UN are reviewed in a four-yearly cycle. Most praise is given for the work that the Council does on the promotion and development of human rights (pp. 127-128). As a body premised in debate and dialogue, the Council excels at discussion, negotiation, and information sharing, which are vital steps in the promotion of human rights (p. 128).

⁵ Rosa Freedman, *The United Nations Human Rights Council: An Early Assessment* (2013).

⁶ Human Rights Watch, 'Keeping the Momentum: One Year in the Life of the UN Human Rights Council' (22 September 2011) 1 <www.hrw.org/reports/2011/09/22/keeping-momentum-0> accessed 18 August 2014.

In focusing on specific case studies and personal stories from victims of human rights abuses, Freedman is able to outline the overlapping and intersecting functions of a number of different UN bodies as well as other international organisations that can be mobilised in the protection of human rights. In 2013, the Independent Expert on human rights of migrants visited Qatar and reported on the abuse of migrant workers in the preparations for the 2022 World Cup. The UN Human Rights Council debated this report, and similar concerns were raised about the abuses at the 2014 World Cup in Brazil. Sporting events demonstrate that bodies other than the Council also fail to protect human rights; FIFA ignored available information about human rights violations (pp. 110-111). Regional organisations include human rights compliance in aid agreements and Freedman suggests that trade and aid could be linked to human rights obligations at the international level (p. 164). The discussion on tourism and sports (p. 109) raises the question whether other activities that boost a state's reputation could also be linked to human rights obligations.

Despite the more recent, albeit tentative, shift at the UN Human Rights Council to protect human rights, the tabled resolutions on 'traditional family rights', the growing threat against human rights defenders, and the continued failure to comment on certain human rights abuses across the world are just a few examples that show the need for reform. After thoroughly assessing the failures of the UN, *Failing to Protect* uses these weaknesses to measure current reform proposals, such as creating a World Court of Human Rights, strengthening regional mechanisms, and reforming the UN human rights machinery. Chapter 13 considers Kozma, Nowak and Scheinin's proposal for the creation of a World Court of Human Rights. Freedman argues that their proposal for a World Court of Human Rights, which would

involve binding judgments that are enforceable by domestic authorities,⁷ fails to engage with the particular weaknesses of the current UN system (p. 144). For example, states have to consent to the involvement of independent experts working with the Special Procedures and similarly at a World Court states are unlikely to consent to the international court's jurisdiction (p. 146). Rather than creating a World Court, Freedman discusses the potential of strengthening the regional human rights systems that are already in place (pp. 151-161).

Failing to Protect suggests that states are more responsive to these regional human rights mechanisms (p. 160). In contrast to the international bodies, regional mechanisms are attractive to states because they can deal with cultural sensitivities. States connected geographically, politically and economically are more likely to agree on an approach to human rights (p. 160). Freedman's slight reticence to endorse regionalised reform is based, in part, on the lack of similar regional systems for people in Asia, parts of Eastern Europe and Australasia (p. 151). However, Freedman does not discuss the more recent regional developments. In 2008, the Arab Charter on Human Rights came into force and established a Committee on Human Rights and in November 2012, the ASEAN Declaration of Human Rights was signed. As of yet, no reports have been prepared for the Arab Committee on Human Rights. This shows that the problem with relying on regional mechanisms is not just the lack of human rights systems in some parts of the world, but also the discrepancy between the levels of protection for human rights afforded by the different regional systems.

Hiding under the surface of this book, and the current debates on the World Court, is a question on the balance between law and politics in protecting human rights. In his recent critique of the proposal for a World Court for Human Rights, Philip Alston highlights one

⁷ Julia Kozma, Manfred Nowak, and Martin Scheinin, *A World Court of Human Rights: Consolidated Statute and Commentary* (Vienna: Neuer Wissenschaftlicher Verlag, 2010).

crude way that law and politics are divided: ‘mass atrocity crimes’ are dealt with through political mechanisms, whereas ‘silent and continuous atrocities’ are ‘left to...international lawyers’.⁸ He then goes on to suggest that prioritising legalism, in the form of a World Court, is not desirable, not least because it gives too much power to a small group of judges.⁹ For Freedman, the relationship between law and politics is more complex. As the book has demonstrated, realism cannot be ignored when assessing the mandates of international organisations (pp. 90-91). The political tactics utilised by states at the Council are likely to be used at a World Court. Freedman argues that hidden abuses and denied access to information could continue to plague a court as it does the Council (p. 148). In relation to protection, at least at present, the relationship between law and politics is one of conflict as state tactics manipulate and undermine the human rights machinery.

However, Freedman also notes the complementary role that political mechanisms can play in human rights law. Mechanisms such as negotiation, dialogue and capacity building work to promote and develop human rights (pp. 127-128). Freedman’s explanation of ‘What Law?’ in the first chapter is primarily an introduction to international law aimed at a non-specialist audience, but it is also a powerful reminder of the blurred lines between soft and hard law and between law and politics. Freedman acknowledges these intersecting legal and political mechanisms and argues that the UN human rights machinery should be considered as a whole (p. 139).

Freedman is correct to suggest that rather than singling out the UN Human Rights Council for failing to protect human rights, it should be reconsidered as one mechanism amongst many

⁸ Philip Alston, ‘Against a World Court for Human Rights’ (2014) 28(2) *Ethics & International Affairs* 197, at 197.

⁹ *Ibid.*, at 206.

(p. 140). The institutional weaknesses and the extent to which states can manipulate its work demonstrate that the Council is 'ill-equipped to undertake protection activities' alone (p. 165). However, if the UN is to be considered as a whole, the other UN bodies concerned with human rights that are left out of Freedman's critique, such as the Economic and Social Council, or those bodies that are involved in the protection of human rights, such as the United Nations Development Programme, should be assessed for institutional strengths and weaknesses. A crucial question is the relationship between these intersecting bodies so that funds and resources are allocated accordingly. Freedman shies away from outright suggesting that the Council should be a promotion and development body, without a protection mandate (see p. 165), and leaves open the question about the respective roles of these bodies.

In the opening sections of the book, Freedman invites the 'wider public' to join the conversation on human rights protection (p. xi). Making use of a wealth of observations, insights and examples, Freedman guides her reader through the UN human rights machinery. *Failing to Protect* is accessible and a good starting point for a non-specialist audience hoping to learn more about human rights protection. Freedman is honest when she writes that it is not a book 'aimed at the specialist reader' (p. xi), but it does provide the specialist with a persuasive impetus to revisit and revise the mechanics of the UN Human Rights Council. *Failing to Protect* shares the frustration of people who watch as the international community fails to respond to human rights abuses. If you are puzzled or outraged by the often-feeble attempts of international bodies to protect human rights, then Freedman's book can uncover some answers.

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